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Subject: Final executed Syntex Facility AOC with appendices
Attachments: Syntex Facility AOC_FINAL_w.appendices_06.20.23.pdf

Hi all,

Here is the final version of the Syntex Facility AOC with Appendices A-C with an effective date of June 9, 2023. Thanks to everyone for getting this accomplished and I look forward to meeting some of you in person at our July kickoff meeting.

Best,
Kate

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7

IN THE MATTER OF:)
)
) Docket No. CERCLA-07-2023-0070
SYNTEX FACILITY SUPERFUND SITE)
Verona, Missouri)
)
BCP Ingredients, Inc., and)
Syntex Agribusiness, Inc.)
)
Respondents)
) **ADMINISTRATIVE SETTLEMENT**
) **AGREEMENT AND ORDER ON**
) **CONSENT FOR FOCUSED REMEDIAL**
) **INVESTIGATION/FEASIBILITY**
) **STUDY**
)
Proceeding Under Sections 104, 107)
and 122 of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act, 42 U.S.C. §§ 9604,)
9607 and 9622, the Missouri Hazardous)
Waste Management Law, § 260.350 to)
§ 260.433, RSMo., Sections 3008(h) and)
3013 of the Resource Conservation and)
Recovery Act, as amended, 42 U.S.C. §§)
6928(h) and 6934, § 260.440 to § 260.470,)
RSMo., and § 260.500 to § 260.550, RSMo.)
)

**ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR FOCUSED
REMEDIAL INVESTIGATION / FEASIBILITY STUDY**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”), the State of Missouri (“Missouri” or the “State”), and Respondents Syntex Agribusiness, Inc. (“Syntex”) and BCP Ingredients, Inc. (“BCP”) (hereinafter, Syntex and BCP collectively may be referred to as “Respondents” and either alone as “Respondent” where the context indicates which is being referenced). EPA, Missouri, and Respondents sometimes collectively are referred to as the “Parties” to this Settlement or individually as a “Party.” As described more fully herein, this Settlement provides for the performance of a Focused Remedial Investigation and a Focused Feasibility Study (sometimes respectively referred to as a “Focused RI” or a “Focused FS”, or collectively as a “Focused RI/FS”) for Operable Unit 3 by Respondents and an area of release/quantity source investigation (sometimes referred to as a “Source Investigation”) by BCP, and the payment of certain response costs incurred by the United States at or in connection with the Syntex Facility Superfund Site (the “Site”), generally located at 299 Extension Street, Verona, Lawrence County, Missouri.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 7 to the Superfund and Emergency Management Division Director by Regional Delegation Nos. R7-14-014-C and R7-14-014-D, dated January 1, 1995 and May 16, 1988, respectively. This Settlement also is issued under the authority vested in the EPA Administrator by the Resource Conservation and Recovery Act (“RCRA”), also known as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, including, without limitation, RCRA §§ 3008(h) and 3013, 42 U.S.C. §§ 6928(h) and 6934. This authority was delegated to the Regional Administrators by EPA Delegation Nos. 8-20 (Monitoring, Testing, Analysis and Reporting, May 11, 1994) and 8-32 (Administrative Enforcement-Corrective Action Authority; Issuance of Orders and Signing of Consent Agreements). These RCRA authorities were further re-delegated by the Regional Administrator of EPA Region 7 to the Air and Waste Management Division Director by Regional Delegation Nos. R7-8-020, dated January 1, 1995, and R7-8-032, dated January 26, 1986, respectively. The delegation for these RCRA authorities was revised to provide the authority to the Land, Chemical and Redevelopment Division Director by Regional Delegations No. R7-8-20 and No. R7-8-32, dated April 29, 2019.

3. The State of Missouri enters into this Settlement Agreement by and through the office of the Missouri Attorney General pursuant to the authority contained in the Missouri Hazardous Waste Management Laws, §§ 260.350 to 260.433, of the Revised Statutes of Missouri (RSMo) and its implementing regulations, and pursuant to §§ 260.500 to 260.550 RSMo, and pursuant to the authority of § 27.060, RSMo. Pursuant to the Missouri Hazardous Waste Management Law; §§ 260.440 to 260.470, RSMo; and its implementing regulations, and pursuant

to §§ 260.500 to 260.550, RSMo, the Missouri Department of Natural Resources (“MoDNR”) is authorized to administer the requirements of this Settlement Agreement as they relate to the State of Missouri and to address certain hazardous waste sites. Pursuant to §§ 260.445.5 and 260.391.1(2), RSMo, the Missouri Department of Health and Senior Services (“MDHSS”) assesses effects on human health from certain hazardous waste sites and releases of hazardous substances and advises MoDNR. Pursuant to § 192.011, RSMo, MDHSS monitors health effects of the environment, prepares risk assessments of environmental hazards, and makes recommendations to MoDNR. Effective December 26, 2012, EPA granted final authorization to the State of Missouri pursuant to RCRA § 3006, 42 U.S.C. § 9626, to operate its hazardous waste management program in lieu of the federal program. *See* 77 Fed. Reg. 65314 (Oct. 26, 2012).

4. EPA, Missouri, and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections V (Findings of Fact) and VI (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms. Notwithstanding any other provision of this Settlement, the Parties reserve all rights and benefits to which they are entitled by virtue of any other agreements and orders among any of the Parties, including, but not limited to, other orders to address environmental conditions at the Site set forth in Paragraphs 20 and 35 below. Except as specifically set forth in this Settlement, this Settlement does not amend any earlier agreements or orders.

5. It is the expectation of the Parties that any Future Response Costs incurred by Missouri in connection with this Settlement will be funded under a cooperative agreement with EPA.

II. PARTIES BOUND

6. This Settlement is binding upon EPA, Missouri, and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent’s responsibilities under this Settlement.

7. Respondents are jointly and severally liable for carrying out all activities required by this Settlement to be conducted by both Respondents together. Each Respondent is separately liable for carrying out the activities specified in this Settlement to be conducted by a single Respondent. In the event of the insolvency or other failure of any one of the Respondents to implement the requirements of this Settlement, the remaining Respondent shall complete all such requirements.

8. Each undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind such Respondent to this Settlement.

9. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Work, and shall condition all contracts entered into under this Settlement upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. STATEMENT OF PURPOSE

10. In entering into this Settlement, the objectives of EPA, Missouri, and Respondents are: (a) for BCP to conduct a Source Investigation as described herein to help determine the potential source(s) of release(s) or threatened release(s) of 1,4-dioxane and chlorobenzene at Operable Unit No. 3 (“OU3”) (referred to as the “Focused RI/FS Phase 1” as described more fully below), provided that EPA, in consultation with MoDNR, reserves the right to add additional hazardous substances based on data discovered during the course of the Focused RI/FS Phase 1 or through other information collected at the Site by EPA or MoDNR (1,4-dioxane, chlorobenzene, and any hazardous substance added by EPA as provided above are hereinafter referred to as “Contaminants of Interest”); (b) for Respondents to complete Focused RI activities as described in Paragraph 55(a) below, taking into account information developed as part of the Focused RI/FS Phase 1 and work performed by Syntex under the 2016 Order described in Paragraphs 26 and 35 below; (c) for Respondents to conduct a Focused FS to determine a potential remedy, if any, for OU3; and (d) for Respondents to reimburse Future Response Costs incurred by EPA with respect to this Settlement. The Focused RI/FS will not include the West Area because West Area groundwater has been adequately investigated through prior investigations and under the 2016 Order described in Paragraphs 26 and 35 below, and further monitoring, if any, of West Area groundwater will be performed by Syntex under a separate operation and maintenance plan for the West Area.

11. The Work conducted under this Settlement is subject to approval by EPA, in consultation with the MoDNR, and is designed to be consistent with CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (“NCP”), the corrective action standards of Section 3008(h) of RCRA, and corresponding Missouri law. Respondents shall conduct all Work under this Settlement in compliance with CERCLA, the NCP, state law, and all applicable EPA guidance, policy, and procedures. The Work performed under this Settlement shall be deemed to comply with the corrective action standards of RCRA.

IV. DEFINITIONS

12. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“2016 Order” shall mean the Administrative Order on Consent described in Paragraphs 26 and 35 below.

“Agencies” shall mean EPA and MoDNR.

“Affected Property” shall mean the East Area, the West Area, and the North Property as described in this Settlement and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions are needed to implement the Focused RI and a Focused FS. The Affected Properties are illustrated on the map attached as Appendix A.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Dioxin” shall mean 2,3,7,8- tetrachlorodibenzo-p-dioxin (“TCDD”) and dioxin-like compounds.

“East Area” is that portion of the Site currently owned by BCP Ingredients, Inc. east of the Spring River and located at 229 Extension Street, Verona, Missouri. The East Area generally is illustrated in Appendix A and is more fully described in Paragraph 13 below.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXXIV (Effective Date).

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs on or after the Effective Date in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XVI (Emergency Response and Notification of Releases), Paragraph 118 (Work Takeover) below, Paragraph 140 (Access to Financial Assurance) below, community involvement (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XVIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (“ATSDR”) costs regarding the Work. Future Response Costs shall not include any costs covered by the 2016 Order.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Settlement; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“MoDNR” shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State.

“Missouri” shall mean the State of Missouri and its departments, agencies, and their successors, including MoDNR and MDHSS.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“North Property” is property owned by Syntex, as described in Paragraph 30 below and generally illustrated in Appendix A, attached.

“Non-Settling Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“Operable Unit 2” or “OU2” shall mean Operable Unit No. 2 as described in the Record of Decision, Ground Water Operable Unit #2, prepared by EPA and dated April 8, 1993.

“Operable Unit 3” or “OU3” shall mean that portion of the Site that generally includes the contaminated groundwater at the Site and the areal extent of such contaminated groundwater. OU3 also includes any Plant Area contaminated soils that cause or contribute to such groundwater contamination. Plant Area soils and groundwater are also referred to herein as the “Source Area” or “Source Area Soils and Groundwater.” If other sources are identified that contribute to the Contaminants of Interest, they may be added to the definition of OU3.

“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including Syntex Agribusiness, Inc. and BCP Ingredients, Inc. The term “Owner

Respondent's Affected Property" means Affected Property owned or controlled by at least one Owner Respondent.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA, Missouri, and Respondents.

"Plant Area" means that portion of the East Area at which manufacturing facilities are and have been operated. The Plant Area generally is depicted in Appendix A.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondents" shall mean Syntex Agribusiness, Inc., and BCP Ingredients, Inc. Where the term "Respondents" is used in connection with Work or any other activity for which only one Respondent is responsible, the term "Respondents" shall be deemed to refer to only the responsible Respondent.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the Syntex Facility Superfund Site located on Extension Street in Verona, Lawrence County, Missouri, and depicted generally on the map attached as Appendix A. As described below in Paragraph 13, the Site is comprised of the East Area, the West Area, and all other areas where hazardous substances have come to be located due to migration from the East Area or West Area.

"State" shall mean the State of Missouri.

"Statement of Work" or "SOW" shall mean the documents describing the activities Respondents must undertake to conduct the Work required by this Settlement. The SOW for Phase 1 of the Focused RI/FS is attached as Appendix B to this Settlement. That Statement of Work is incorporated into this Settlement and is an enforceable part of this Settlement, as are any modifications made thereto or any additional SOWs in accordance with this Settlement.

"Syntex Facility Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established by EPA pursuant to Section 122(b)(3) of

CERCLA, 42 U.S.C. § 9622(b)(3). The response costs associated with OU3 shall, to the extent practicable, be kept separate from any other response costs for the Site, including but not limited to the account referred to in the 2016 Order.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“Trench Area” is the approximately 1.3-acre subarea of the West Area of the Site described below in Paragraph 13.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) related to the Work.

“West Area” is that portion of the Site owned by Syntex and west of the Spring River. The West Area is described below in Paragraph 13 and generally is depicted in Appendix A.

“Work” shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section XIV (Record Retention). Additional work, when used in the lower case, becomes Work once approved by the Agencies.

V. EPA’S FINDINGS OF FACT

13. The Site is located on Extension Street, Verona, Lawrence County, Missouri. The Site is comprised of the East Area, the West Area, and all other areas where hazardous substances have come to be located due to migration from the East Area or West Area, and is generally depicted in Appendix A. The East Area and the West Area are separated by the Spring River. The East Area is east of the Spring River and covers approximately 100 acres and contains the Plant Area and surrounding property in the 100-year flood plain of the Spring River. The Plant Area is surrounded by a flood berm topped with a fence. The West Area is west of the Spring River and covers approximately 80-acres upland of the Spring River and contains a 1.3-acre subarea known as the Trench Area where manufacturing wastes from the East Area, including some wastes containing dioxin, were historically disposed. The North Property as depicted on Appendix A is immediately north of the East and West Areas and covers approximately 60 acres.

14. The Site is located on the western edge of the city of Verona, a small town of approximately 800 people located in southwest Missouri, about 40 miles southwest of Springfield, Missouri.

15. Hoffman-Taff, Inc. (“Hoffman-Taff”) owned the Site in the 1960s and produced materials at the East Area plant for the U.S. Department of Defense. In 1969, Hoffman-Taff leased a portion of a building at the plant to Northeastern Pharmaceutical and Chemical Company

(“NEPACCO”) for the production of hexachlorophene. The manufacturing processes of Hoffman-Taff and NEPACCO generated dioxin as a byproduct. The production of hexachlorophene involved the intermediate production of 2,4,5 trichlorophenol (“TCP”) and the formation of dioxin. In the course of purifying the hexachlorophene, still bottom wastes were created, which would have contained the majority of the dioxin. These still bottoms from the hexachlorophene process were managed in a storage tank located at the Site.

16. Syntex acquired the Site in 1969. NEPACCO continued to operate at the Site through 1972. The plant also produced choline salts.

17. Syntex submitted Part A of a RCRA hazardous waste permit application for the manufacturing portion of the facility on November 19, 1980. In response to comments by EPA, Syntex submitted to EPA a revised Part A permit application on May 20, 1981. Syntex operated a drum storage area under RCRA interim status until Syntex ceased storing wastes in the drum storage area in August 1996.

18. Syntex submitted a RCRA Interim Status Drum Storage Area (“DSA”) Closure Plan to MoDNR in March 1995. Syntex completed closure of the DSA based on risk-based standards approved by MoDNR. On November 15, 1997, Syntex submitted a final DSA Closure Report certifying closure in accordance with the “Revised Closure Plan for Interim Status Container Storage Area, dated April 29, 1996 and Approved Modifications.”

19. The Site was added to the National Priorities List on September 8, 1983.

20. As a result of the historical manufacturing activities at the Site, Syntex began investigating the Site in 1982, and subsequently performed work under administrative consent orders as follows: (a) an Order Regarding Monitoring, Testing, Analyses and Reporting entered in August 1982 under Section 3013 of RCRA, Docket No. 82-H-36; (b) a Consent Agreement and Order, Docket No. 83-H-008, entered in September 1983 under Section 106(a) of CERCLA and Section 3013 of RCRA; and (c) an Administrative Order on Consent for Response Actions, Docket No. VII-97-F-0016, entered in July 1997 under Sections 104, 106(a) 107, and 122 of CERCLA. The 1997 Order was to implement response action decisions selected in the Record of Decision (“ROD”) issued in 1993 (Operable Unit 2 [OU2] ROD for Site groundwater) and to implement a removal action to address PCB contamination (1997 Removal Action Memorandum). Investigative and remedial activities were conducted in accordance with the regulatory framework established in these documents, work plans approved by EPA, and other EPA approvals and oversight. In 2016, Syntex entered and began performing work under a fourth administrative Order, the 2016 Order, in support of EPA’s Five-Year Review Process.

21. RCRA corrective action activities at the Site were administratively deferred to requirements under CERCLA in 1989. The Site is described annually on a tracking report between MoDNR and EPA RCRA corrective action programs as deferred to CERCLA.

22. Remedial actions for soils at the East Area, in accordance with EPA-approved procedures at the time of the implementation of the remedial actions, included the excavation of soils contaminated with TCDD above an action level established pursuant to EPA-approved methodologies, decontamination and disposal of dioxin-contaminated equipment, off-Site thermal

treatment of excavated soils and cleaning solutions, establishment and maintenance of asphalt caps or vegetative covers over areas exceeding threshold levels of dioxin established in EPA-approved work plans, and installation of fences and signage to restrict access to certain areas.

23. Remedial actions for dioxin-contaminated soils in the Trench Area (located in the West Area) included backfilling of low areas, installation of a clay and topsoil cap and an up-gradient interceptor trench and establishment of vegetative cover, and installation of fences and signage. In September 1998, EPA issued a Remedial Action Report, which was prepared to document the completion of the remedial action for Operable Unit 1 (“OU1”) at the Site. This report included the remedial actions for soils described in Paragraphs 22 and 23 of this Settlement. Paragraph 48 of the 1983 Consent Agreement and Order states, in part, that “[u]pon completion of the activities required by Paragraphs 35 through 40 of this Order, EPA shall release Syntex from any and all liability respecting TCDD, TCP, TCB and HEX located at the Facility and the Adjoining Property which is the subject to this Order.”

24. With respect to groundwater, Syntex established monitoring networks for the East Area and the West Area. In 1992, EPA conducted a Baseline Risk Assessment based on the sampling results of the groundwater monitoring. For purposes of the Risk Assessment, EPA assumed a completed reasonable maximum exposure (“RME”) pathway that has never been established for the Site and concluded that risks from the Site groundwater were within an acceptable range for the hypothetical RME. Accordingly, the OU2 ROD established a remedy of no further action for groundwater and two additional years of groundwater monitoring. At the end of the two-year monitoring period, contaminants in groundwater had not increased.

25. In 1996, Syntex recorded a perpetual covenant restricting the land use of the East Area to industrial purposes in the Office of Recorder of Deeds for Lawrence County, Missouri. Syntex sold the East Area to DuCoa, L.P. that same year. In 2001, DuCoa, L.P. sold the East Area to BCP, which is the current owner of the East Area and operator of the manufacturing plant.

26. After remedial actions for soils, groundwater, and surface water were implemented, EPA determined conditions at the Site to be protective of human health and the environment. Five-Year Reviews (“FYRs”) conducted in 2012 and 2017, however, concluded that the overall protectiveness of the remedy could not be determined without additional information. This was due to changes in the risk assessment methodology, assumptions, and toxicity values after the remedies were selected and implemented. To address the issues identified in the 2012 FYR, Syntex entered into the 2016 Order with EPA and the State. The purpose of the 2016 Order was to perform a supplemental investigation of the Site so EPA could determine whether the historical remedies remain protective.

27. Beginning in the fall of 2014, BCP undertook a plant expansion that involved disturbance of soils immediately south of the then-existing manufacturing plant. Additional plant expansion work was performed beginning in 2020, and plant expansions are ongoing.

28. Syntex continues to own the West Area. In 2017, pursuant to the 2016 Order, Syntex sampled soils within and along the unpaved access roads that led to the Trench Area and monitoring wells and analyzed for dioxin. Dioxin was found to be below levels of concern for potential trespassers and short-term contract workers. It was determined that the risks associated

with dioxin in the West Area soils at the Site were under control as long as appropriate operation and maintenance activities continue to be implemented. Also in 2017, Syntex paved the access roads with asphalt. The West Area remains undeveloped, with the exception of the asphalt access roadway to the Trench Area and monitoring wells.

29. In December 2018, BCP, EPA, MoDNR, and the Lawrence County Commission entered into an environmental covenant over the East Area that, among other things: (i) prohibits use of groundwater underlying the East Area for all purposes other than environmental monitoring and remediation; (ii) prohibits any soil disturbance in the East Area without obtaining approval of soils characterization procedures from EPA and MoDNR except during emergencies; and (iii) requires perpetual maintenance of hardscape over specified portions of the East Area. This environmental covenant was recorded with the Lawrence County, Missouri, Recorder of Deeds Office on January 9, 2019, as Document No. 2019-00000088.

30. In 2019, Syntex purchased the North Property, the approximately 60-acre property immediately north of the Site which was formerly a family farm and residence. Syntex demolished the former residence and a separate abandoned house on this property and closed a domestic well on the property in accordance with Missouri well closure requirements.

31. On March 31, 2022, Syntex, EPA, and MoDNR entered into an environmental covenant over the West Area that, among other things: (i) except for limited circumstances, prohibits use of groundwater underlying the West Area or drilling into groundwater-bearing units (ii) restricts land uses and certain construction; and (iii) requires maintenance of the Trench Area cap and fencing. This environmental covenant was recorded with the Lawrence County, Missouri, Recorder of Deeds Office on April 14, 2022, as Document No. 2022-002115.

32. On March 31, 2022, Syntex, EPA, and MoDNR entered into an environmental covenant over the North Property that, among other things, except for limited circumstances: (i) prohibits use of groundwater underlying the North Property; or (ii) drilling into groundwater bearing units or installing new groundwater wells. This environmental covenant was recorded with the Lawrence County, Missouri, Recorder of Deeds Office on April 14, 2022, as Document No. 2022-002116.

33. EPA conducted Five-Year Reviews of the Site in 1997, 2002, 2007, 2012, 2017, and 2022. The 2012 Five-Year Review recommended additional sampling at the Site to determine whether the remedies implemented at the Site continue to be protective in light of the revised non-cancer reference dose (“RfD”) for TCDD, which EPA released in 2012.

34. The 2012 Five-Year Review had originally mistakenly concluded that Syntex had not fulfilled the requirements of the OU1 ROD in several respects. In 2013, after meeting with EPA, Syntex submitted comments to EPA on the 2012 Five-Year Review that included the identification of this and other issues. By letter dated June 9, 2014, EPA distributed an April 22, 2014, memorandum identifying and correcting certain errors in the 2012 Five-Year Review and stating that “[t]he remedy implemented for OU1 at the Site was consistent with the ROD for OU1....”

35. In September 2016, Syntex entered into an Administrative Settlement Agreement and Order on Consent for Investigation (Docket No. CERCLA-07-2016-0008) (the “2016 Order”). Under the 2016 Order, Syntex has performed additional work at the Site to investigate soil and ground water contamination as part of EPA’s Five-Year Review process.

36. In 2017, Syntex completed shallow soil sampling across the East Area pursuant to the 2016 Order. The work under the 2016 Order developed and set forth the risk-based concentrations for shallow soils, which represents the upper threshold of acceptable dioxin concentration. In 2020, Syntex reported the sampling results and protectiveness evaluation in the July 15, 2020, Revised East Area Shallow Soil Sampling, Analysis, and Protectiveness Review Report. This Report was approved by letter from EPA dated September 21, 2020. The Report demonstrated that the risks associated with dioxin in soils at the East Area are under control as long as appropriate operation and maintenance activities continue to be implemented.

37. In 2017, pursuant to the 2016 Order, Syntex completed sampling and analysis of Spring River sediment and a Screening Level Ecological Risk Assessment (“SLERA”). The ecological risk of exposure (to Spring River sediments) to the ecological receptors was well below the most conservative screening levels. Further ecological assessment was determined to be unwarranted.

38. Pursuant to the 2016 Order, Syntex has conducted 16 rounds of groundwater sampling of East Area groundwater monitoring wells as of the first quarter of 2022. Following the first six quarters, the list of analytes was reduced to 1,4-dioxane and chlorobenzene, which were the only analytes detected at levels of concern. During this period, 1,4-dioxane has been detected downgradient of the Plant Area in 17 of 20 wells, including monitoring well EA-223B at concentrations up to 2,650 ug/L (EPA Tapwater Remedial Screening Level is 0.46 ug/L). During the most recent sampling event in February 2022, chlorobenzene was detected in a small number of wells. Chlorobenzene has been consistently found in one well, MW-6, at levels exceeding EPA’s Maximum Contaminant Level (“MCL”) of 100 ug/L.

39. Pursuant to the 2016 Order, Syntex performed direct-push groundwater sampling at 96 locations within the unconsolidated portion of the upper aquifer and across the East Area and North Property. Groundwater was sampled from multiple depths and analyzed for 1,4-dioxane and chlorobenzene. A plume of 1,4-dioxane contaminated groundwater extends from the Plant Area and into the North Property. The highest 1,4-dioxane concentration observed to date on the Site (13,100 ug/L) was from a sample collected in the Plant Area on the west side of building V-11.

40. Pursuant to the 2016 Order and the East Area Groundwater Sampling and Analysis Plan (“SAP”) attached to the 2016 Order, as that SAP has been amended from time to time, Syntex has presented to EPA and MoDNR a proposal for Phases 3 and 4 of the SAP as amended (hereinafter, “EA GW Phases 3 – 4”) to install additional groundwater monitoring wells at the East Area and North Property and to monitor those and certain other wells to collect additional groundwater data that will be presented in reports to EPA and BCP. Syntex will conduct those EA GW Phases 3 – 4 activities pursuant to the 2016 Order and not pursuant to this Settlement. The groundwater data generated from those activities will be used by the Respondents

to conduct the Work pursuant to this Settlement. Any further groundwater investigation work beyond EA GW Phases 3 – 4 will be conducted pursuant to this Settlement, not the 2016 Order.

41. BCP manufactures choline chloride at the facility, along with other products. DuCoa, L.P. produced choline chloride and other products when it owned the facility. Syntex also produced choline chloride and other products when it owned the facility.

42. EPA sampled process wastewater from the current Plant Area in February 2020 and detected 1,4-dioxane, chlorobenzene, and vinyl chloride (MCL is 2 ug/L) at a maximum concentration of 360 ug/L, 1,600 ug/L, and 140 ug/L, respectively. EPA sampled two National Pollutant Discharge Elimination System (“NPDES”) permitted stormwater outfalls, one discharging directly to and one discharging indirectly to the Spring River and detected bis(2-chloroethyl)ether (US EPA Tapwater Regional Screening Level is 0.014 ug/L), 1,4-dioxane, chlorobenzene, and hexachlorophene (US EPA Tapwater Regional Screening Level is 6 ug/L) at maximum concentrations of 30 ug/L (estimated), 9 ug/L, 8.1 ug/L, and 8.3 ug/L (estimated), respectively. BCP sampled process wastewater at its facility in December 2019. BCP analyzed samples for 1,4-dioxane and detected it in three of four waste streams at a maximum concentration of 640 ug/L.

43. Syntex is a Delaware Corporation authorized to do business in the State of Missouri.

44. BCP is a Delaware Corporation authorized to do business in the State of Missouri.

45. 1,4-dioxane is commonly called “dioxane” but should not be confused with dioxin or dioxins, which are a different class of chemical compounds. 1,4-dioxane is a synthetic industrial chemical that is completely miscible in water. 1,4-dioxane historically has been used as a stabilizer of certain chemicals and can be formed as an unwanted byproduct during various manufacturing operations. It is a flammable liquid and a fire hazard. It is potentially explosive if exposed to light or air. 1,4-dioxane is short-lived in the atmosphere, may leach readily from soil to groundwater, migrates rapidly in groundwater, and is relatively resistant to biodegradation in the subsurface. It is classified by EPA as “likely to be carcinogenic to humans” by all routes of exposure. Short-term exposure to 1,4-dioxane may cause eye, nose, and throat irritation; long-term exposure may cause kidney and liver damage.

VI. EPA’s CONCLUSIONS OF LAW AND DETERMINATIONS

46. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) As defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), Respondent BCP is the “owner” and/or “operator” of the East Area of the facility, and Respondent Syntex is the “owner” and/or “operator” of the West Area of the facility.

(2) Respondents Syntex and BCP were the “owners” and/or “operators” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The conditions described in the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective response action and minimize litigation, 42 U.S.C. § 9622(a).

g. EPA has determined that Respondents are qualified to conduct the Focused RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement.

VII. SETTLEMENT AGREEMENT AND ORDER

47. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

48. **Selection of Contractors, Personnel.** All Work performed under this Settlement shall be under the direction and supervision of qualified personnel.

a. Within 30 days after the Effective Date, and before the Focused RI/FS Phase 1 Work outlined below begins, Respondent BCP shall notify EPA and MoDNR in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in

carrying out such Focused RI/FS Phase 1 Work. If, after the commencement of such Work, BCP retains additional contractors or subcontractors, BCP shall notify EPA and MoDNR of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least 30 days prior to commencement of Work by such additional contractors or subcontractors.

b. At least 30 days before the second phase of Work outlined in Paragraph 55 below (referred to as “Focused RI/FS Phase 2”) begins, Respondents BCP and Syntex shall notify EPA and MoDNR in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of such Work, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA and MoDNR of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least 30 days prior to commencement of Work by such additional contractors or subcontractors.

c. EPA retains the right, at any time and in consultation with MoDNR, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, the Respondent or Respondents responsible for that phase of Work shall retain a different contractor or subcontractor and shall notify EPA and MoDNR of that contractor’s or subcontractor’s name, title, contact information, and qualifications within 30 days after EPA’s disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs – Requirements with guidance for use” (American Society for Quality, February 2014), by submitting a copy of the proposed contractor’s Quality Management Plan (“QMP”). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2),” EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA’s review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project. If Foth Infrastructure & Environment, LLC is selected as a contractor or subcontractor for the Work, the Agencies acknowledge that Foth already has met the requirements of this Paragraph pursuant to the 2016 Order.

49. **Project Coordinators**

a. Within 30 days after the Effective Date, each Respondent shall designate a Project Coordinator for the Work who shall be responsible for administration of such Work and the coordination among Respondents and shall submit to EPA and MoDNR the designated Project Coordinator’s name, title, address, telephone number, email address, and qualifications. A Respondent may change its Project Coordinator by giving at least 15 days’ written notice to EPA and MoDNR.

b. To the greatest extent possible, each Project Coordinator or the coordinator’s designee shall be present on Site or readily available during the Work. EPA, in consultation with MoDNR, retains the right to disapprove of a designated Project Coordinator

who does not meet the requirements of Paragraph 48 (Selection of Contractors, Personnel) above. If EPA, in consultation with MoDNR, disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA and MoDNR of that person's name, title, contact information, and qualifications within 14 days following EPA's disapproval.

c. Notice or communication relating to performance of the Work under this Settlement from EPA to Respondents' Project Coordinators shall constitute notice or communication to Respondents.

50. EPA has designated Brian Zurbuchen of the Site Remediation Branch, Superfund & Emergency Management Division, U.S. EPA, Region 7, as its Remedial Project Manager ("RPM"). EPA will notify Respondents of a change of its designated RPM. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to the EPA RPM in accordance with Paragraph 63.a below. All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to Brian Zurbuchen, Remedial Project Manager, U.S. EPA, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, or Zurbuchen.brian@epa.gov.

51. EPA's RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's RPM shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action when he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA RPM from the area under study pursuant to this Settlement shall not be cause for stoppage or delay of Work.

52. MoDNR has designated Mikayla Morris as the State Project Manager. MoDNR shall have the right to change its Project Manager by providing notice to the other Parties prior to the change. Respondent shall direct all submissions as required by this Settlement Agreement to Mikayla Morris, Project Manager, Environmental Remediation Program, MoDNR, PO Box 176, Jefferson City, Missouri 65102, or Mikayla.Morris@dnr.mo.gov.

53. All submissions shall be directed to Respondents' Project Coordinators, EPA's Remedial Project Manager, and MoDNR's Project Manager as specified above in this Section. If not otherwise specified in the text of this Settlement, any communication related to this Settlement and approved work plans shall be made electronically or by mail to the following persons:

For Respondent Syntex:

Matthew Shaps
Syntex Agribusiness, Inc.
1 DNA Way (MS-49)
South San Francisco, California 94080
shaps.matthew@gene.com

With copies to:

James Price
Spencer Fane LLP
1000 Walnut, Suite 1400
Kansas City, Missouri 64106
jprice@spencerfane.com

Tim Webster
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
twebster@sidley.com

For Respondent BCP:

Shawn Thomas
Global EHSS Director
Balchem Corporation
299 Extension Street
Verona, MO 65769
sthomas@balchem.com

With copies to:

Hatsuki Miyata
General Counsel and Corporate Secretary
Balchem Corporation
5 Paragon Drive
Montvale, NJ 07645
hmiyata@balchem.com

Brittany Barrientos
Stinson
1201 Walnut Street, Suite 2900
Kansas City, MO 64106
brittany.barrientos@stinson.com

For EPA:

Kate Curl
Office of Regional Counsel
Syntex Facility Superfund Site
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

curl.kate@epa.gov

For Missouri:

Elliott Usher
Legal Counsel
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102
elliott.usher@dnr.mo.gov

IX. WORK TO BE PERFORMED

54. The Work under this Settlement will be conducted in phases. The first phase (Focused RI/FS Phase 1) will be performed by BCP and will consist of a Source Investigation at the Plant Area related to the Contaminants of Interest. The activities required in this Source Investigation are outlined in the attached SOW and will generally follow the requirements of a remedial investigation. If additional Plant Area Source Investigation activities are required, EPA in consultation with MoDNR shall notify BCP of the required activities. All Focused RI/FS Phase 1 activities shall be performed by BCP.

55. The second phase of the Work under this Settlement (Focused RI/FS Phase 2) will consist of the following and shall be performed by Respondents.

a. Following the completion of the Focused RI/FS Phase 1 above and Syntex's 2016 Order EA GW Phases 3 – 4 work, the Respondents shall prepare a report recommending to the Agencies whether any additional data is necessary to characterize the Contaminants of Interest, or to determine the nature and extent of the contamination. The report shall include a SOW for the Focused RI/FS Phase 2. The Phase 2 SOW will generally consist of the following tasks: community involvement; collection of any supplemental information necessary for the Focused RI; Human Health Risk Assessment (“HHRA”); Screening-Level Ecological Risk Assessment (if necessary); Focused RI reporting; and a Focused FS. The report on recommendations and the Phase 2 SOW shall be provided within 90 days of the Agencies' approvals of the Focused RI/FS Phase 1 report or the report on the 2016 Order EA GW Phases 3 – 4 work, whichever approval is later. EPA and Respondents shall work together to timely finalize the Phase 2 SOW. Any prior information or data collected at the Site that is useful for the Work required under this Settlement and the SOW, including but not limited to work performed by Syntex pursuant to the 2016 Order and any Institutional Controls, can be used in this Work.

b. Following completion of Respondents' Focused RI/FS Phase 2, EPA would be responsible for selection of an OU3 remedy and would document this selection in a Record of Decision (ROD). The remedial action alternatives selected by EPA in a ROD or other remedy decision document will be developed to meet the cleanup standards specified in Section 121 of CERCLA, 42 U.S.C. § 9621. As specified in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), EPA will provide oversight of the Respondents' activities throughout Work under this Settlement.

56. Respondents shall conduct the Work and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to, the “Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA” (“RI/FS Guidance”), OSWER Directive # 9355.3-01 (October 1988), available at <https://semspub.epa.gov/src/document/11/128301>, “Guidance for Data Useability in Risk Assessment (Part A), Final,” OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at <http://semspub.epa.gov/src/document/11/156756>, and guidance referenced therein and guidance referenced in the SOW. For any regulation or guidance referenced in this Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement. The Focused RI shall consist of collecting data to characterize conditions related the Contaminants of Interest, determining the nature and extent of such contamination at or from the Site, assessing risk to human health and the environment considering Institutional Controls in place as described in Paragraphs 29, 31, and 32 above, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Focused FS shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants from the Affected Property. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

57. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section X (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section X (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally approved, or modified deliverables.

58. **Modification of Work Plans**

a. If at any time during the Work the Respondent(s) responsible for a phase of the Work identify a need for additional data, such Respondent(s) shall submit a memorandum documenting the need for additional data to EPA’s Project Coordinator within 30 days after identification. EPA in its discretion and in consultation with MoDNR will determine whether the additional data will be collected by the responsible Respondent(s) and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site that may implicate Work under this Agreement, the Respondent(s) responsible for that portion of the Affected Property or that phase of the Work shall notify EPA’s and MoDNR’s Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA, in consultation with MoDNR, determines that the

unanticipated or changed circumstances warrant changes in any Focused RI Work Plan or Focused FS Work Plan, EPA in consultation with MoDNR shall modify the applicable work plan in writing accordingly or direct such responsible Respondent(s) to modify and submit the modified work plan for approval. The responsible Respondent(s) shall perform the applicable Work as modified and approved.

c. EPA may determine, in consultation with MoDNR, that, in addition to tasks defined in any initially approved work plan, other additional work may be necessary to accomplish the objectives of the Focused RI/FS. Respondent(s) responsible for that phase of the Work shall perform these response actions in addition to those required by the initially approved and applicable work plan, including any approved modifications, if EPA determines that such actions are necessary for a thorough Focused RI/FS as described herein.

d. The responsible Respondent(s) shall confirm its/their willingness to perform the additional work in writing to EPA and MoDNR within 21 days after receipt of the EPA request. If such Respondent(s) object to any modification determined by EPA to be necessary pursuant to this paragraph, Respondent(s) may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The applicable SOW and/or work plan shall be modified in accordance with the final resolution of the dispute.

e. Respondent(s) shall complete the additional work according to the standards, specifications, and schedule set forth or approved by EPA in any written modification to the applicable work plan or written supplement. EPA reserves the right to conduct the work itself, to seek reimbursement from Respondents for the costs incurred in performing the work, and/or to seek any other appropriate relief.

f. Nothing in this paragraph shall be construed to limit EPA's or MoDNR's authority to require performance of further response actions at the Site, nor shall this paragraph be construed to limit Respondents' right to dispute whether Respondents, or either of them, are responsible to perform such further response actions.

59. Off-Site Shipments.

a. Respondents may ship hazardous substances, pollutants, and contaminants related to the Work from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material related to the Work from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This notice requirement shall not apply to any such off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the

shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the Focused RI/FS and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste ("IDW") related to the Work from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

60. **Meetings.** Respondents shall make presentations at, and participate in, meetings at the request of EPA, in consultation with MoDNR, during the preparation of the Focused RI and Focused FS. In addition to discussion of the technical aspects of the Focused RI and Focused FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion, in consultation with MoDNR, and shall consider Respondents' availability and provide Respondents at least 14 days' notice. Under this Settlement, Respondents are not obligated to participate in meetings not related to the Work required pursuant to the Settlement.

61. **Progress Reports.** In addition to the deliverables set forth in this Settlement, Respondents shall submit written monthly progress reports to EPA by the 15th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

- a. describe the actions that have been taken to comply with this Settlement during that month;
- b. include all results of sampling and tests and all other data received by Respondents pursuant to the Settlement as specified in Paragraph 73.b;
- c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for Focused RI/FS completion;
- d. describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays; and
- e. describe any modifications to the work plans or other schedules Respondents have proposed or that have been approved by EPA and the State.

62. **Notice of Progress Reports Schedule Changes.** If the schedule for any activity described in the progress reports, including required deliverables, changes, Respondents shall notify EPA and the State of such change at least 7 days, if practical, before the activity.

X. SUBMISSION AND APPROVAL OF DELIVERABLES

63. Submission of Deliverables

a. General Requirements for Deliverables

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to EPA's RPM at Brian Zurbuchen, 11201 Renner Boulevard, Lenexa, Kansas 66219, Zurbuchen.brian@epa.gov, and to the State at Mikayla Morris, Environmental Remediation Program, Missouri Department of Natural Resources, PO Box 176, Jefferson City, Missouri 65102, Mikayla.Morris@dnr.mo.gov. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic portable document format (pdf) form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 63.b. All other deliverables shall be submitted in the electronic form specified by EPA's Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide paper copies of such exhibits upon request of the Agencies' Project Coordinators.

b. Technical Specifications for Deliverables

(1) Sampling and monitoring data should be submitted in standard SCRIBE Electronic Data Deliverable ("EDD") format. The EDD format is available at the following website: https://response.epa.gov/site/site_profile.aspx?site_id=ScribeGIS. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially referenced data and geospatial data, should be submitted in the EPA Region 7 EDD format. Geospatial submittals should include: unprojected horizontal geographic coordinates (i.e., latitude and longitude) in decimal degree format; and the projected system coordinates of the Missouri State Plane, Western Zone, North American Datum 1983 (NAD83) in units of U.S. Survey Feet. Elevation coordinates shall use the vertical control datum of North American Vertical Datum of 1988 (NAVD 88) and units of U.S. Survey Feet. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee ("FGDC") Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor ("EME"), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

64. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Settlement or the attached SOW, EPA after consulting with MoDNR shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA, after consulting with MoDNR, also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable. However, EPA shall not modify a submission without providing Respondents at least one notice of deficiency and an opportunity to cure within thirty (30) days except where to do so would cause serious disruption to the Work or where previous submissions have been disapproved due to material defects.

b. **Resubmissions.** Upon receipt of a notice of disapproval under Paragraph 64.a(1) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 64.a(1), Respondents shall, within 20 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA after consulting with MoDNR may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Paragraph 64.a (Initial Submissions) or Paragraph 64.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) Respondents shall take any action required by such deliverable, or portion thereof subject only to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XXI (Stipulated Penalties) for violations of this Settlement.

65. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA after consultation with MoDNR.

66. In the event that EPA takes over some of the tasks, but not the preparation of the Focused RI Report (“RI Report”) or the Focused FS Report (“FS Report”), Respondents shall incorporate and integrate information supplied by EPA into those reports.

67. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: any work plan, any Sampling and Analysis Plan, draft RI Report, and draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.

68. For all remaining deliverables not listed in Paragraph 67, Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right, after consulting with MoDNR, to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

69. **Material Defects.** If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 64.a (Initial Submissions) or 64.b (Resubmissions) above due to such material defect, Respondents shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section XXI (Stipulated Penalties).

70. Neither failure of EPA to expressly approve or disapprove of Respondents’ submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

71. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5),” EPA/240/B-01/003 (Mar. 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5),” EPA/240/R-02/009 (Dec. 2002), and “Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A-900C (Mar. 2005).

72. Laboratories

a. Respondents shall ensure that EPA and MoDNR personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Settlement. In addition, Respondents shall ensure that such

laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (“QAPP”) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency’s “EPA QA Field Activities Procedure” CIO 2105-P-02.1 (9/23/2014), available at <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions,” available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements>, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA’s Contract Laboratory Program (<https://www.epa.gov/superfund/programs/clp/>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, and “Air Toxics - Monitoring Methods” (<https://www.epa.gov/amtic/air-toxics-ambient-monitoring#methods>).

b. Upon approval by EPA, after a reasonable opportunity for review and comment by the State, Respondents may use other appropriate analytical methods, as long as (i) quality assurance/quality control (“QA/QC”) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use” (American Society for Quality, Feb. 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (Mar. 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (“ERLN”) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the approved QAPP.

73. **Sampling**

a. Upon request, Respondents shall provide split or duplicate samples to EPA and MoDNR or their authorized representatives. Respondents shall notify EPA and MoDNR not less than 15 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and MoDNR shall have the right to take any additional

samples that EPA or MoDNR deem necessary. EPA and the State shall provide to Respondents split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondents shall submit to EPA and MoDNR, in the next monthly progress report as described in Paragraph 61 (Progress Reports), the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Work and/or the implementation of this Settlement (where such data is to be validated, Respondents may submit the data in the next monthly progress report after the validation is completed). EPA and the State will provide to Respondents validated data generated by the Agencies unless such data are exempt from disclosure by any federal or state law or regulation.

c. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State, or Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved work plans. If Respondents object to any other data relating to the Work, Respondents shall submit to EPA and MoDNR a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA and MoDNR within 15 days after the monthly progress report containing the data.

XII. PROPERTY REQUIREMENTS

74. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and the United States, providing that such Non-Settling Owner and Owner Respondent shall, with respect to Owner Settling Respondent's Affected Property: (i) provide EPA, the State, and the other Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those listed in Paragraph 74.a (Access Requirements) below; and (ii) refrain from using such Affected Property in any manner that EPA, after consulting with the appropriate department of the State, determines will interfere with or adversely affect the implementation or integrity of the Work. Respondents shall provide a copy of such access agreement(s) with Non-Settling Owner(s), if necessary, to EPA and the State.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA or the State;
- (3) Conducting investigations regarding contamination at or near the Site;

- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of QA/QC practices as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 118 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section XIII (Access to Information);
- (9) Assessing Respondents' compliance with the Settlement;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

75. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA and MoDNR and include a description of the steps taken to comply with the requirements. If EPA after consulting with MoDNR deems it appropriate, may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XVII (Payment of Response Costs).

76. If EPA, in consultation with MoDNR, determines in a decision document prepared in accordance with the NCP that additional Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such Institutional Controls. In the event of any Transfer of the Affected Property, unless EPA, in consultation with the State, otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

77. Notwithstanding any provision of the Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. ACCESS TO INFORMATION

78. Subject to Respondents' rights in Paragraphs 79 and 80, Respondents shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents concerning the Work or implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information related to the Work. Respondents shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

79. Privileged and Protected Claims

a. Respondents may assert that all or part of a Record requested by EPA or the State is privileged or protected as provided under state or federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 79.b and except as provided in Paragraph 79.c below.

b. If Respondents assert a claim of privilege or protection, they shall provide EPA and MoDNR with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA and MoDNR in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Work, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement. So long as Respondents provide EPA and MoDNR Records containing the information described in (1) or (2), this subparagraph shall not be construed to apply to other Records that refer to, discuss, restate, or are drafts of such information.

80. **Business Confidential Claims.** Respondents may assert that all or part of a Record provided to EPA and the State under this Section or Section XIV (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of

CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). With respect to the State only, records subject to claims of confidentiality pursuant to this paragraph shall also be subject to confidentiality pursuant to § 260.430, RSMo. Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

81. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. RECORD RETENTION

82. Until 10 years after EPA provides Respondents with notice, pursuant to Section XXXI (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. The obligations in this Section shall not apply to earlier drafts or versions of documents once a superseding draft or version is completed, provided that any documents submitted to EPA or the State pursuant to this Settlement shall be retained. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

83. At the conclusion of the document retention period, Respondents shall notify EPA and MoDNR at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 79 (Privileged and Protected Claims) above, Respondents shall deliver any such Records to EPA or the State.

84. Each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections

104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XV. COMPLIANCE WITH OTHER LAWS

85. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations when performing the Work. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XX (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

86. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, the Respondent(s) responsible for that portion of the Work or in control of that portion of the Site shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent(s) shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. The Respondent(s) shall also immediately notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at 913-281-0991 of the incident or Site conditions. In the event that the responsible Respondent(s) fail to take appropriate response action as required by this paragraph, and EPA takes such action instead, such Respondent(s) shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XVII (Payment of Response Costs).

87. **Release Reporting.** Upon the occurrence of any event during performance of the Work that one or both Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, the Respondent(s) responsible for that portion of the Work or in control of that portion of the Site shall immediately orally notify EPA and the State's Project Manager or, in the event of his/her unavailability, the Regional Duty Officer at 913-281-0991, the National Response Center at (800) 424-8802, and MoDNR's 24-hour Environmental Emergency Response Spill Line at 573-634-2436. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA 42 U.S.C. § 11004.

88. For any event covered under this Section, the Respondent(s) shall submit a written report to EPA within 30 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVII. PAYMENT OF RESPONSE COSTS

89. **Payments for Future Response Costs.** Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bill.** On a periodic basis, EPA will send Respondents a bill requiring payment that includes an Itemized Cost Summary Report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 90 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 91 (Contesting Future Response Costs) below. Respondents shall make the payment as follows:

b. At <https://www.epa.gov> in accordance with the following payment instructions:

(1) enter "sfo 1.1" in the search field to access EPA's Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number 0751. Respondents shall send to EPA, in accordance with Paragraph 53 above, a notice of this payment including these references, or

(2) Payment by check made payable to "Hazardous Substance Superfund" and sent to the following address:

U.S. Environmental Protection Agency
Superfund Payments – CFC
PO Box 979076
St. Louis, Missouri 63197-9000

c. **Deposit of Future Response Costs Payments.** The total amount to be paid by Respondents pursuant to Paragraph 89.a (Periodic Bill) above shall be deposited by EPA in the Syntex Facility Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Syntex Facility Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

90. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XXI (Stipulated Penalties).

91. **Contesting Future Response Costs.** Respondents may initiate the procedures of Section XIX(Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 89 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such a dispute, Respondents shall submit a Notice of Dispute in writing to EPA's Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 89, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC") and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to EPA's Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 89. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 89. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVIII. OTHER ORDERS

92. As noted in Paragraph 20 above, Syntex has entered into four prior Orders with EPA associated with the Site that are covered by this Section. They are as follows: (1) an Order Regarding Monitoring, Testing, Analyses and Reporting entered in August 1982 under Section 3013 of RCRA; (2) a Consent Agreement and Order, Docket No. 83-H-008, entered in September 1983 under Section 106(a) of CERCLA and Section 3013 of RCRA; (3) an Administrative Order on Consent for Response Actions, Docket No. VII-97-F-0016, entered in July 1997 under Sections 104, 106(a) 107, and 122 of CERCLA; and (4) the 2016 Order entered in September 2016 to conduct a supplemental soil and ground water investigation as part of EPA's Five-Year Review process. By separate letter to Syntex, a copy of which is attached as Appendix C, EPA

has deemed the obligations of the Orders numbered 1, 2, and 3 above to be satisfied by Syntex, and EPA considers all required actions of those Orders to be fully performed. The letter is effective on the Effective Date of this Settlement. Any remaining long-term obligations required by those Orders, like operation and maintenance, have been included in this Settlement, the attached letter, or addressed elsewhere, including but not limited to, in the Environmental Covenants described in Paragraphs 29, 31, and 32. Nothing in this Settlement shall be construed to impose any responsibility on BCP for the work under prior Orders or remaining long-term obligations required by those Orders.

93. As also provided in the letter attached as Appendix C, EPA and MoDNR will discuss the steps required in order to complete the work under the 2016 Order. OU3 has been created to address Site groundwater, and all future groundwater work will be performed under OU3.

XIX. DISPUTE RESOLUTION

94. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

95. **Informal Dispute Resolution.** If Respondents object to any EPA or State action taken pursuant to this Settlement, including billings for Future Response Costs, Respondents, or either of them, shall send EPA and MoDNR a written Notice of Dispute describing the objection(s) within 15 days after such action. EPA, the State, and Respondents shall have 30 days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

96. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation Period, submit a statement of position to EPA and the State. EPA or the State may, within 30 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

97. Except as provided in Paragraph 91 (Contesting Future Response Costs) or as agreed by EPA and the State, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph 107, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do

not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XX. FORCE MAJEURE

98. “Force Majeure” for purposes of this Settlement is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents’ contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents’ best efforts to fulfill the obligation. The requirement that Respondents exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential Force Majeure and best efforts to address the effects of any potential Force Majeure (a) as it is occurring, and (b) following the potential Force Majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. Force Majeure does not include financial inability to complete the Work or increased cost of performance.

99. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondents, or either of them, shall notify EPA’s RPM orally or, in his absence, the alternate EPA Project Coordinator if one has been designated, or, in the event both of EPA’s designated representatives are unavailable, the Director of the Superfund & Emergency Management Division, EPA Region 7, within 7 days of when Respondents first knew that the event might cause a delay. Respondents shall also notify the State. Within 10 days thereafter, Respondents shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents’ rationale for attributing such delay to a Force Majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a Force Majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents’ contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of Force Majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a Force Majeure under Paragraph 98 and whether Respondents have exercised their best efforts under Paragraph 98, EPA may, in its unreviewable discretion, excuse in writing Respondents’ failure to submit timely or complete notices under this paragraph.

100. If EPA, in consultation with the State, agrees that the delay or anticipated delay is attributable to a Force Majeure, the time for performance of the obligations under this Settlement that are affected by the Force Majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is

attributable to a Force Majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure.

101. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA’s notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 98 and 99 above. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

102. The failure by EPA to timely complete any obligation under this Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XXI. STIPULATED PENALTIES

103. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 104.a and 105 below for failure to comply with the obligations specified in Paragraphs 104.b and 105 below, unless excused under Section XX (Force Majeure). “Comply” as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement. Each Respondent shall be responsible only for any stipulated penalties imposed as a result of portions of the Work, deliverable, or other activity for which it is responsible. When both Respondents are responsible for stipulated penalties, the amounts of the stipulated penalties specified in this section and otherwise imposed shall be to the Respondents collectively and not individually.

104. Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in Paragraph 104.b below:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 200	1st through 14th day
\$ 400	15th through 30th day
\$ 1,000	31st day and beyond

b. Obligations

(1) Payment of any amount due under Section XVII (Payment of Response Costs).

- (2) Establishment and maintenance of financial assurance in accordance with Section XXIX (Financial Assurance).
- (3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 91 (Contesting Future Response Costs) above.
- (4) Providing the following major deliverables in a timely and adequate manner as outlined in approved schedules:
 - i. Previous Investigations and Historical Records Summary Report;
 - ii. Focused RI Work Plan
 - iii. Focused RI Report; and
 - iv. Baseline Human Health Risk Assessment

105. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in Paragraph 104.b above:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 200	1st through 14th day
\$ 400	15th through 30th day
\$ 1,000	31st day and beyond

106. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 118 (Work Takeover) below, Respondents shall be liable for a stipulated penalty in the amount of \$ 100,000. Stipulated penalties under this paragraph are in addition to the remedies available to EPA under Paragraphs 118 (Work Takeover) below and 140 (Access to Financial Assurance) below.

107. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period and shall be paid within 15 days after the agreement or the receipt of EPA’s decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section X (Submission and Approval of Deliverables), during the period, if any, beginning on the 31st day after EPA’s receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Paragraph 96 (Formal Dispute Resolution) above, during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

108. Following EPA’s determination that Respondents (or a Respondent, if only one Respondent is responsible for that phase of the Work) have failed to comply with a requirement of this Settlement, EPA may give Respondent(s) written notification of the failure and describe the noncompliance. EPA may send Respondent(s) a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding paragraph regardless of whether EPA has notified Respondent(s) of a violation.

109. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents’ receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XIX (Dispute Resolution) within the 30-day period. Respondents shall make all payments at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to the Site Name, docket number, the Site/Spill ID Number, and the purpose of the payment. Respondents may pay by check as per Paragraph 89.b(2). Respondents shall send to EPA, in accordance with Paragraph 53 above, a notice of this payment including these references.

110. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 107 above until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 109 above until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

111. The payment of penalties and Interest, if any, shall not alter in any way Respondents’ obligation to complete performance of the Work required under this Settlement.

112. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA or MoDNR to seek any other remedies or sanctions available by virtue of Respondents’ violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that neither EPA nor MoDNR shall seek civil penalties pursuant Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA or similar state laws for any violation for which a stipulated penalty is provided in this Settlement, except in the case of willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 118 (Work Takeover) below.

113. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XXII. COVENANTS BY EPA AND MISSOURI

114. Except as provided in Section XXIII (Reservations of Rights by EPA and Missouri), EPA covenants not to sue or to take administrative action against Respondents

pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and/or Sections 3008(h) and 3013 of RCRA, 42 U.S.C. §§ 6928(h) and 6934, for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

115. Except as otherwise specifically provided in this Settlement, Missouri covenants not to sue or to take administrative action against Respondent(s) pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), Sections 3008(h) and 3013 of RCRA, 42 U.S.C. §§ 6928(h) and 6934, or the Missouri Hazardous Waste Management Law, §§ 260.350 to 260.430, RSMo, and/or §§ 260.440 to 260.470, RSMo, and/or §§ 260.500 to 260.550, RSMo, and implementing regulations, for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by “each” Respondent of its obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XXIII. RESERVATIONS OF RIGHTS BY EPA AND MISSOURI

116. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA, the United States, or the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

117. The covenant not to sue set forth in Section XXII (Covenants by EPA and Missouri) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. liability for failure by Respondents to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

118. **Work Takeover**

a. In the event EPA determines, after consultation with the State, that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to the Respondent(s) responsible for that phase of the Work. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide the applicable Respondent(s) a period of 10 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 118.a above, Respondents have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 118.b. Funding of Work Takeover costs is addressed under Paragraph 140 (Access to Financial Assurance) below.

c. Respondents may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 118.b above. However, notwithstanding Respondents’ invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 118.b above until the earlier of (1) the date that Respondents remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 96 (Formal Dispute Resolution) above.

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIV. COVENANTS BY RESPONDENTS

119. Except as specifically provided in this Settlement, Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or their

contractors or employees, with respect to the Work, Future Response Costs, or this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement; or

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Missouri Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

120. Except as provided in Paragraph 123 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Section XXIII (Reservations of Rights by EPA and Missouri), other than in Paragraph 117.a (liability for failure to meet a requirement of the Settlement), 117.d (criminal liability), or 117.e (liability for violations of federal or state law), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

121. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

122. Respondents reserve, and this Settlement is without prejudice to, claims against the United States or the State, subject to the provisions of Chapter 171 of Title 28 of the United States Code and applicable state law, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States or State, as that term is defined in 28 U.S.C. § 2671 and applicable state law, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

123. Waiver of Claims by Respondents

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

b. Exceptions to Waiver

(1) The waiver under this Paragraph 123 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

(2) The waiver under Paragraph 123.a(1) (De Micromis Waiver) above shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or (iii) if such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XXV. OTHER CLAIMS

124. By issuance of this Settlement, the United States and EPA and the State assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

125. Except as expressly provided in Paragraphs 123 (Waiver of Claims by Respondents) above and Section XXII (Covenants by EPA and Missouri), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

126. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXVI. EFFECT OF SETTLEMENT/CONTRIBUTION

127. Except as provided in Paragraphs 123 (Waiver of Claims by Respondents) above, nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXIV (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

128. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States and the State within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work and Future Response Costs. Provided, however, nothing in this Settlement supersedes any contractual agreements among the Respondents with respect to contribution actions or claims, or otherwise.

129. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

130. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

131. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however,

that nothing in this paragraph affects the enforceability of the covenants by EPA and the State set forth in Section XXII (Covenants By EPA and Missouri).

XXVII. INDEMNIFICATION

132. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Each Respondent shall indemnify, save, and hold harmless the United States, the State, their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of such Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on such Respondent's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, each Respondent agrees to pay the United States / State all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States / State based on negligent or other wrongful acts or omissions of such Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. Neither the United States nor the State shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States or the State.

133. The United States / State shall give Respondents notice of any claim for which either plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

134. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, each Respondent shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between such Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVIII. INSURANCE

135. Before commencing their respective on-site Work under this Settlement, each Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXXI (Notice of Completion of Work), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA and the State as additional insureds with

respect to all liability arising out of the activities performed by or on behalf of such Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, each Respondent shall provide EPA and MoDNR with certificates of such insurance. Each Respondent shall resubmit such certificates each year on or before the anniversary of the Effective Date. If EPA believes it necessary it can request a copy of the insurance policy covering the Work. In addition, for the duration of the Settlement, each Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of said Respondent in furtherance of this Settlement. If a Respondent demonstrates by evidence satisfactory to EPA and MoDNR that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, such Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA and MoDNR under this Paragraph identify the Site and the EPA docket number for this action.

XXIX. FINANCIAL ASSURANCE

136. In order to ensure completion of the Focused RI/FS Phase 1 required by the Settlement, Respondent BCP shall secure financial assurance, initially in the amount of \$300,000 ("Estimated Cost of the Work for Phase 1"), for the benefit of EPA. If additional work under the Focused RI/FS Phase 2 as outlined in Paragraph 55 above is determined to be necessary, Respondents shall propose, in the Report described in Paragraph 55.a above recommending tasks for the Focused RI/FS Phase 2, and a Phase 2 SOW, the amount of financial assurance for the second phase of Work under this Settlement, subject to approval by EPA. If subsequent phases of Work are required, Respondents shall propose the amount of financial assurance for such phases, which shall be subject to the approval by EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. If both Respondents are responsible for a phase of the Work, each Respondent may supply its own and separate financial assurance for one-half the total financial assurance amount. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies. The financial assurance will need to be modified when a determination is made that additional work is necessary.

- a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by a Respondent that it meets the financial test criteria of Paragraph 137 below, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 137 below.

137. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 136.e or 136.f, above must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance-Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

138. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 136.e or 136.f above must also:

- a. Annually resubmit the documents described in Paragraph 137.b above within 90 days after the close of the affected Respondent's or guarantor's fiscal year;
- b. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph 137.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

139. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer

satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of Paragraph 141 (Modification of Amount, Form, or Terms of Financial Assurance) below in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

140. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 118.b above, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 140.d below.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 140.d below.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 118.b above, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [and/or related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraphs 136.e or 136.f, above then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 140 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Syntex Facility Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 140 must be reimbursed as Future Response Costs under Section XVII (Payment of Response Costs).

141. Modification of Amount, Form, or Terms of Financial Assurance.

Respondents, or either of them, may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraphs 53 and 135 above, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XVIII (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraphs 53 and 135 above.

142. Release, Cancellation, or Discontinuation of Financial Assurance.

Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXXI (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XVIII (Dispute Resolution).

XXX. MODIFICATION

143. EPA's Project Coordinator, in consultation with MoDNR, may modify any plan or schedule or the SOW in writing or by oral direction. Such modifications are subject to the procedures in Paragraph 58. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.

144. If Respondents seek permission to deviate from any approved work plan or schedule or the SOW, Respondents' Project Coordinators, or any of them if applicable, shall submit written requests to EPA and MoDNR for approval outlining the proposed modification and its basis. Such modifications are subject to the procedures in Paragraph 58. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM, following consultation with MoDNR, pursuant to Paragraph 143.

145. No informal advice, guidance, suggestion, or comment by EPA's RPM or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

146. At the conclusion of the Focused RI/FS Phase 1 under this Settlement and the EA GW Phases 3 – 4 work by Syntex pursuant to the 2016 Order, EPA and Respondents shall confer in an effort to identify if one Respondent should be responsible for completing any remaining Work based on new information developed during the investigations alone or in consideration together with other information. If the Parties agree that one Respondent should be responsible for completing any remaining Work, the Parties shall amend the Settlement accordingly.

XXXI. NOTICE OF COMPLETION OF WORK

147. When EPA, following consultation with MoDNR, determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Future Response Costs and Record Retention, EPA will provide written notice to Respondents. If EPA determines, following consultation with MoDNR, that any Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall implement the modified and approved work plans and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified work plans shall be a violation of this Settlement.

XXXII. INTEGRATION/APPENDICES

148. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

- a. “Appendix A” is the map of the Site.
- b. “Appendix B” is the SOW for Focused Remedial Investigation/Feasibility Study Phase 1.
- c. “Appendix C” is the letter from EPA to Syntex.

XXXIII. ADMINISTRATIVE RECORD

149. EPA, in consultation with MoDNR, will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA and MoDNR documents developed during the course of the Focused RI and, if necessary, Focused FS upon which selection of the remedial action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the remedial action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the remedial action.

XXXIV. EFFECTIVE DATE

150. This Settlement shall be effective when the Settlement is signed by the Superfund & Emergency Management Division Director or his/her delegate.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

6/9/2023

Dated

**Scott D.
Hayes**  Digitally signed by Scott
D. Hayes
Date: 2023.06.09
07:18:35 -05'00'

Robert D. Jurgens, Director
Superfund & Emergency Management Division
Region 7

**JEFFERY
ROBICHAUD**  Digitally signed by
JEFFERY ROBICHAUD
Date: 2023.06.12
15:40:02 -05'00'

Dated

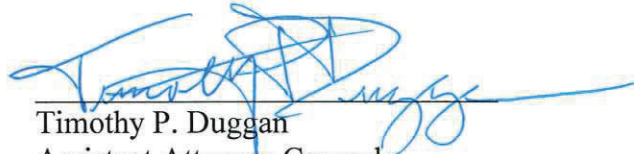
Jeffery Robichaud, Director
Land, Chemical, and Redevelopment Division
Region 7

IT IS SO AGREED AND ORDERED:

STATE OF MISSOURI

ANDREW BAILEY
Attorney General

6/2/23
Dated



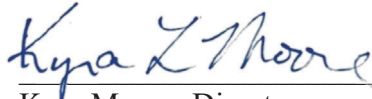
Timothy P. Duggan
Assistant Attorney General

IT IS SO AGREED AND ORDERED:

MISSOURI DEPARTMENT OF NATURAL RESOURCES

06/07/2023

Dated

A handwritten signature in blue ink that reads "Kyra L Moore". The signature is written in a cursive style with a large initial 'K' and 'M'.

Kyra Moore, Director

Department of Environmental Quality

Signature Page for Settlement Regarding Syntex Facility Superfund Site

FOR _____ :
Syntex Agribusiness, Inc.

May 24, 2023
Dated

Sean A. Johnston
Sean A. Johnston
President
Syntex Agribusiness, Inc.

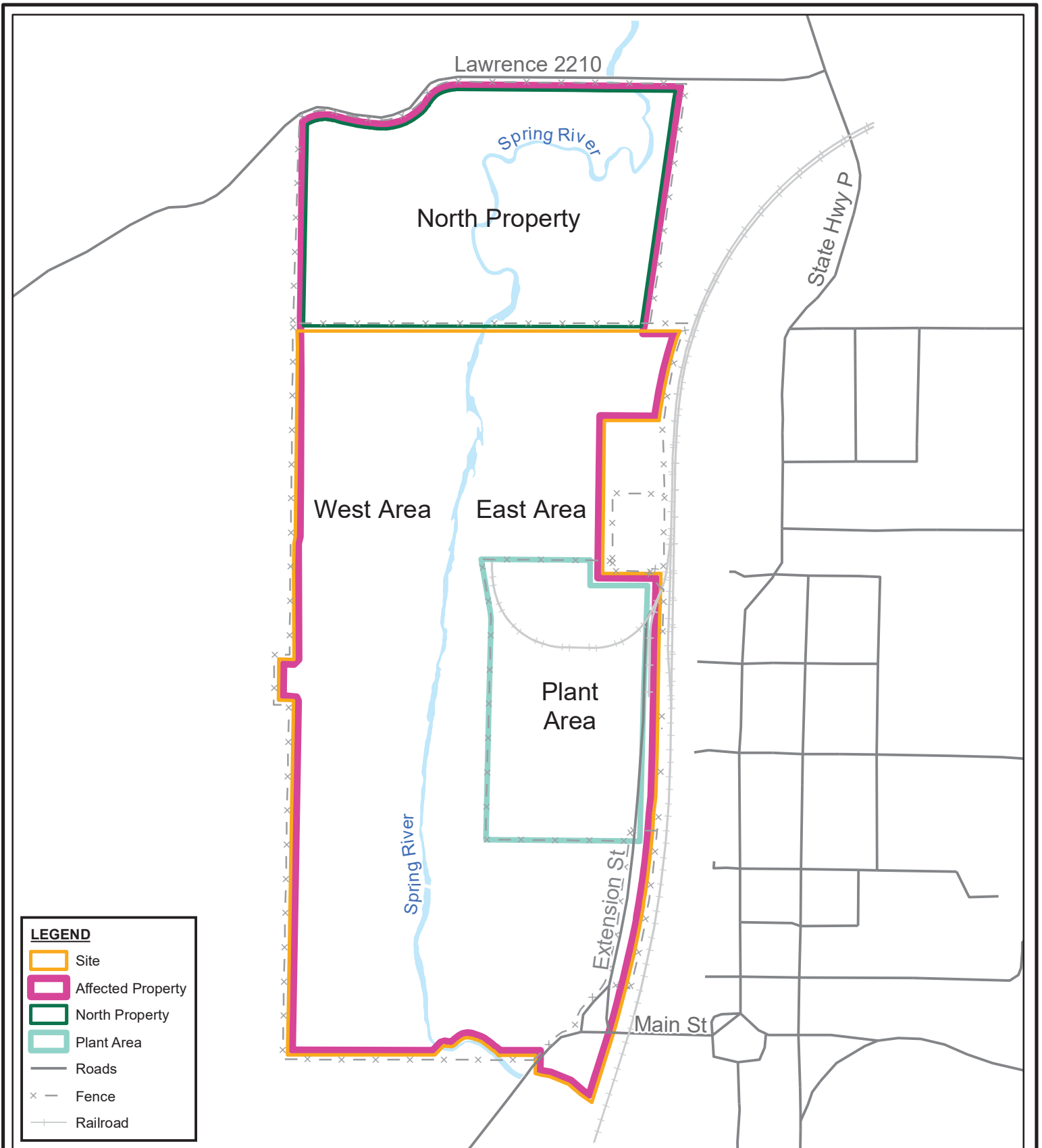
Signature Page for Settlement Regarding Syntex Facility Superfund Site


FOR _____ :
BCP Ingredients, Inc.

May 25, 2023

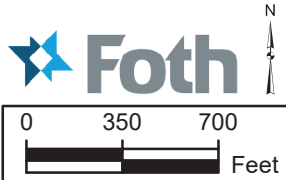
Dated

Mark Stach
Corporate Counsel
Balchem Corporation



Appendix A: Map of Site and Affected Property

VERONA, MISSOURI



This drawing is neither a legally recorded map nor a survey and is not intended to be used as one. This drawing is a compilation of records, information and data used for reference purposes only.

Date: JANUARY 2023	Revision Date:
Drawn By: DAT	Checked By: RMK
Scope: 15S239	

APPENDIX B
STATEMENT OF WORK

STATEMENT OF WORK
FOR
FOCUSED REMEDIAL INVESTIGATION/FEASIBILITY STUDY PHASE 1
OPERABLE UNIT 03
SYNTEX FACILITY SUPERFUND SITE
Verona, Lawrence County, State of Missouri
EPA Region 7

June 2023

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1. INTRODUCTION

1.1 Purpose of the SOW. This Statement of Work ("SOW") sets forth the procedures and requirements for implementing a Focused Remedial Investigation/Feasibility Study, Phase 1 ("Focused RI/FS Phase 1") of Operable Unit 3 ("OU3") of the Syntex Facility Superfund Site. The primary contaminants for this Focused RI/FS are 1,4-dioxane (EPA's Regional Screening Level for Tapwater is 0.46 ug/L, which represents a 1×10^{-6} excess lifetime cancer risk) and chlorobenzene (EPA Maximum Contaminant Level is 100 ug/L), provided that EPA, in consultation with MoDNR, reserves the right to add additional hazardous substances if data is discovered during the course of the Focused RI/FS Phase 1 and EPA has documentation demonstrating that one or both of the Respondents may be responsible for such contamination (1,4-dioxane, chlorobenzene, and any hazardous substance added by EPA as provided above are hereinafter referred to as "Contaminants of Interest"). The Focused RI/FS Phase 1 focuses on the Plant Area as set forth in the Administrative Settlement Agreement Order on Consent (Docket # CERCLA-07-2023-0070) ("Settlement"). As provided in Paragraph 55.a. of the Settlement, at the conclusion of the Focused RI/FS Phase 1, the Respondents shall provide their recommended SOW for the second phase of the Work, including their recommendations as to additional site investigation data needed to complete the Focused RI, Human Health Risk Assessment, Screening Level Ecological Risk Assessment (if necessary), and a Focused FS ("SOW for the Focused RI/FS Phase 2").

1.2 Structure of the SOW

- Section 2 (Focused RI/FS Phase 1) sets forth the completion requirements for Phase 1.
- Section 3 (Community Involvement) sets forth EPA's and BCP's responsibilities for community involvement.
- Section 4 (Meetings) sets forth BCP's meetings and reporting obligations.
- Section 5 (Schedule) describes the schedule regarding BCP's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 6 (References) provides a list of references, including URLs.

1.3 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Settlement have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term "Section" means a section of the SOW, unless otherwise stated. The terms that are defined in this SOW have the meanings specified herein.

1.4 Modifications to the SOW will follow procedures described in Sections IX (Work to Be Performed) and XXX (Modification) of the Settlement.

1.5 The Operable Unit ("OU") referred to in this SOW is consistent with the definitions in the Settlement.

2. FOCUSED RI/FS PHASE 1

2.1 Previous Investigation and Historical Records Summary Report. Within 90 days after the Effective Date of the Settlement, BCP shall submit a compilation and analysis of existing background information to assist in planning the scope of the Focused RI/FS Phase 1. Specifically, this compilation and analysis shall include currently available data relating to Plant Area operations and past handling and disposal practices (specifically, the type of contaminants released, leaked, discharged, spilled, buried, sprayed, applied, or otherwise disposed, and where,

when, and by whom) that could have resulted in the release of the Contaminants of Interest. BCP will refer to Table 2-1 of the Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988) for a comprehensive list of data collection information sources. This information will be utilized in determining additional data needed to characterize OU3 and better define potential applicable or relevant and appropriate requirements ("ARARs"). This compilation and review shall also include known results from previous sampling or other investigations related to the Contaminants of Interest that may have been conducted.

For the period of BCP ownership/operation, the Previous Investigation and Historical Records Summary Report shall also include the following:

- (a) An accounting of the quantities of process wastewater, process water (including intermediate products), and byproducts known or suspected to contain 1,4-dioxane or any other hazardous substance, generated annually, and disposition of these materials that involved the use of, and could have resulted in the production or formation of, the Contaminants of Interest. Identify the chemical composition and characteristics of the process wastewater, process water (including intermediate products), and byproducts. Identify how and within which buildings the process wastewater, process water (including intermediate products), and byproducts were generated, treated, stored, transported, disposed, or otherwise handled during current and historical operations. Identify the quantity of process wastewater, process water (including intermediate products), and byproducts generated, treated, stored, transported, disposed, or otherwise handled. Identify the locations utilized for treatment or disposal of process wastewater, process water (including intermediate products), and byproducts. Describe the treatment or disposal methods.
- (b) An accounting of discharges to outfalls authorized by Missouri State Operating Permit MO-0002356.
- (c) An accounting of any discharges to outfalls not included in the Missouri State Operating Permit MO-0002356.
- (d) An accounting of discharges to and from the approximately 1,000,000-gallon lined lagoon.
- (e) An accounting of discharges elsewhere in OU3, if any, that are known or suspected to include the Contaminants of Interest.
- (f) Location and description of underground utilities (telephone, electrical, chemical sewer, sumps, sanitary sewer, creek (or stormwater) drains, water main, etc.) to the extent known, past and present. Provide information on the installation, repair, replacement, or removal of chemical sewers, sumps, chemical drains, and creek (or stormwater) drains. Provide information on whether such sewers or drains ever leaked or in any way released Contaminants of Interest into the environment.
- (g) Provide information, including location and description of any subsurface structures (e.g., buildings, tanks, etc.).
- (h) Provide information, including location and description of the storm water drainage system to the extent known, past and present, including septic tank(s), subsurface disposal field(s),

and other underground structures: and where, when, and how such systems are and have been emptied.

- (i) All physical parameter monitoring results of outfall discharges, including, but not limited to, the following: temperature, turbidity, color, odor, conductivity, and solids.
- (j) All chemical parameter monitoring results of outfall discharges, including, but not limited to the following: pH, benzaldehyde, chlorobenzene, chloroethane, chloromethane, 1,4-dioxane, bis(2-ethylhexyl)phthalate, vinyl chloride, arsenic, and manganese.
- (k) An accounting and locations of releases or disposals of Contaminants of Interest to the surface, surface water, or groundwater, known or suspected to have occurred during facility operation.
- (l) Any additional information on actual or potential releases of process water or wastewater known or suspected to contain or relate to the presence of 1,4-dioxane and/or chlorobenzene, including but not limited to, the time period of actual or potential release and the location of actual or potential release.

2.2 Conceptual Site Model Report. Within 60 days after EPA and MoDNR's review and approval of the Previous Investigation and Historical Records Summary Report, BCP shall develop and submit a Conceptual Site Model ("CSM") of Plant Area sources of release of the Contaminants of Interest, if any; pathways for migration of any releases; and potential receptors (human and ecological) and route of exposure, if any, for EPA and MoDNR review and approval. Information from the Previous Investigation and Historical Records Summary Report should be integrated into the CSM. The CSM is intended to be an iterative, "living representation" that summarizes and helps project teams visualize and understand the available information.

The CSM shall specifically focus on the period of BCP ownership/operation and past and current uses of the facility to identify the Contaminants of Interest; affected or potentially affected environmental media; known or suspected sources of Contaminants of Interest; known or potential releases and release mechanisms; known and potential migration routes; and exposure pathways. A critical element is defining the location and nature of sources of contamination that have affected or continue to affect various media.

2.3 Focused RI/FS Phase 1 Work Plan. Within 60 days after EPA and MoDNR 's review and approval of the CSM, BCP shall submit a work plan for the Focused RI/FS Phase 1 ("Work Plan") to EPA and MoDNR for review and approval. The Work Plan will include a comprehensive description of the work to be performed (the "Phase 1 Work"), including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan must include the rationale for the Phase 1 Work. The Phase 1 Work to be performed is an investigation of soils and groundwater at the Plant Area to determine the source(s) of the Contaminants of Interest. BCP shall scope the work to analyze all of the past and present processes at the facility and determine if 1,4-dioxane and/or chlorobenzene have been or could be released by these processes into OU3 as set forth in the CSM.

The Work Plan will present a statement of the problems(s) and potential problems(s) posed by the current and historical operations at the facility and the objectives for the Focused RI/FS Phase 1 consistent with the approved CSM. BCP will document the specific project scope in the Work Plan, which must include all requirements under Sections 2.3(a) through 2.3(f).

- (a) **Sampling and Analysis Plan ("SAP").** BCP will prepare a SAP that sets forth plans and procedures to be followed during implementation of the Focused RI/FS Phase 1. The sample collection and analytical activities are conducted in accordance with technically acceptable protocols which meet data quality objectives ("DQOs"). The SAP provides a mechanism for planning field activities and consists of a field sampling plan ("FSP") and a quality assurance project plan ("QAPP").
- (b) **Field Sampling Plan.** BCP shall draft an FSP that defines in detail the sampling and data-gathering methods that will be used for each field activity on the project. It shall include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required.
- (c) **Quality Assurance Project Plan.** The QAPP augments the FSP and addresses sample analysis and data handling for the Focused RI/FS Phase 1. The QAPP will describe the project objectives and organization, functional activities, and quality assurance and quality control ("QA/QC") protocols that will be used to achieve the desired DQOs. The QAPP must include a detailed explanation of BCP's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. BCP shall develop the QAPP in accordance with EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006) and EPA Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009, (Dec. 2002).
- (d) **Health and Safety Plan ("HASP").** The HASP describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Phase 1 Work. BCP shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration ("OSHA") requirements under 29 C.F.R. Parts 1910 and 1926. The HASP should cover Phase 1 Work and the plan shall also include contingency planning. Neither EPA nor MoDNR approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.
- (e) **Emergency Response Plan.** The Emergency Response Plan ("ERP") must describe procedures to be used in the event of an accident or emergency during Focused RI/FS Phase 1 (for example, power outages, water impoundment failure, treatment plant failure, slope failure, weather etc.). The ERP must include:
 - (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, state, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures ("SPCC") Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;

- (4) Notification activities in accordance with Paragraph 87 of the Settlement (Release Reporting) in the event of a release of hazardous substances, pollutants or contaminants requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11004; and
- (5) A description of all necessary actions to ensure compliance with Section 4 (Meetings) and Section 5 (Schedule) in the event of an occurrence during the performance of the Focused RI/FS Phase 1 that causes or threatens the release of a hazardous substance, pollutants or contaminants that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.

(f) **Laboratories**

- (1) BCP shall ensure that EPA and MoDNR personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by BCP pursuant to this Settlement. In addition, BCP shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP. BCP shall ensure that the laboratories utilized for the analysis of samples taken pursuant to this SOW meet the competency requirements set forth in EPA's quality assurance guidance, and that the laboratories perform all analyses using EPA-accepted methods.
- (2) Upon approval by EPA, and after a reasonable opportunity for review and comment by the MoDNR, BCP may use other appropriate analytical methods, as long as (i) QA/QC criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.
- (3) BCP shall ensure that all laboratories they use for analysis of samples taken pursuant to this SOW have a documented Quality System that complies with ASQ/ANSI E4:2014, quality assurance references in Section 6, or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.
- (4) BCP shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this SOW are conducted in accordance with the procedures set forth in the approved QAPP.

2.4 Focused RI/FS Phase 1 Activities. BCP shall perform the activities described in the approved Focused RI/FS Phase 1 Work Plan and synthesize all the information gathered during activities to develop a final CSM. The Focused RI/FS Phase 1 shall consist of collecting data to characterize site conditions and determining the nature and extent of Contaminants of Interest. BCP will identify the known and suspected sources of the Contaminants of Interest, and define the nature,

extent, and volume of contamination, including physical and chemical constituents, and concentrations, and any changes in its physical or chemical characteristics. In addition, the Focused RI/FS Phase 1 activities must include the following:

(a) **Sampling**

- (1) BCP shall notify EPA and the MoDNR not less than 15 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. At EPA's or MoDNR's oral or written request, or the request of EPA's oversight assistant, BCP shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) or MoDNR of any samples collected in implementing the Phase 1 Work. All split samples of BCP shall be analyzed by the methods identified in the QAPP. Split samples collected by EPA or MoDNR will be analyzed using their respective QAPP. In addition, EPA and MoDNR shall have the right to take any additional samples that EPA or MoDNR deem necessary. Upon request, EPA and MoDNR shall provide to BCP split or duplicate samples of any samples they take as part of EPA's oversight of BCP's implementation of this SOW, and any such samples shall be analyzed by BCP in accordance with the approved QAPP.
 - (2) BCP shall submit to EPA and MoDNR, in the next monthly progress report as described in Paragraph 61 of the Settlement, all results of sampling, tests, modeling, or other validated data, which shall include supporting documentation, generated by BCP, or on BCP's behalf, with respect to the Focused RI/FS Phase 1. For data that is subject to a validation process, BCP shall only submit data and results after validation is complete.
 - (3) Except as set forth below, BCP waives any objections to any data gathered, generated, or evaluated by EPA and MoDNR in the performance or oversight of this SOW that has been verified according to the QA/QC procedures required by this SOW or the EPA-approved Work Plan or SAP related to this SOW. If BCP objects to any data relating to the Focused RI/FS Phase 1, BCP shall submit to EPA and MoDNR a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The Report must be submitted to EPA and MoDNR within 15 days after the monthly progress report containing the data.
- (b) **Draft Focused RI/FS Phase 1 Report.** Within 60 days after EPA's receipt of all validated analytical results from the field work pursuant to the schedule set forth in the Work Plan, BCP shall submit to EPA and MoDNR for review and approval pursuant to Paragraph 54 of the Settlement, a draft Focused RI/FS Phase 1 Report consistent with the SOW, Work Plan, and SAP ("Focused RI/FS Phase 1 Report"). This Report shall summarize results of field activities to characterize the Plant Area, sources of 1,4-dioxane and/or chlorobenzene contamination, the nature and extent of contamination, and the fate and transport of contaminants. Following comments by EPA and MoDNR, BCP will prepare the final Focused RI/FS Phase 1 Report which satisfactorily addresses these comments.

2.5 Certification. All deliverables under this SOW must be signed by the lead Project Coordinator for the deliverable, or other responsible official of the Respondent responsible for the deliverable, and must contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. COMMUNITY INVOLVEMENT

3.1 Community Involvement Responsibilities. EPA has the lead responsibility for developing and implementing community involvement activities in connection with OU3. Pursuant to 40 C.F.R. § 300.430(c)(2), prior to commencing any Focused RI/FS Phase 1 field work, EPA will conduct (or will have conducted), to the extent practicable, interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns and their needs for information, and to learn how and when the stakeholders would like to be involved in the Superfund process. Based on those interviews and other relevant information, the Agency will then update or prepare (or will have updated or prepared) a formal Community Involvement Plan ("CIP") specifying the community involvement activities that the Agency expects to undertake during the Focused RI/FS Phase 1, and the rest of the Work. Such activities should include, if applicable, notifying the community of any opportunity to apply for a Technical Assistance Grant ("TAG"), any use of the Agency's Technical Assistance Services for Communities ("TASC") contract, and/or any opportunity to submit a Letter of Intent to apply for assistance via a Technical Assistance Plan ("TAP"). In addition, at the commencement of the Focused RI/FS Phase 1, EPA will (pursuant to 40 C.F.R. § 300.815(a)) expand, if needed, the existing Syntex Superfund Site administrative record file available for public inspection and give adequate notice of the availability of the file. The CIP should also specify the actions that the Agency expects to undertake pursuant to 40 C.F.R. § 300.430(f)(3)(i)(C) to provide a reasonable opportunity for submission of comments on the Focused RI/FS Phase 1.

If requested by EPA with at least 14 days' notice, BCP shall participate in community involvement activities, which may include participation in (1) the preparation of information regarding the Focused RI/FS Phase 1 for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Focused RI/FS Phase 1. BCP is not obligated to participate in meetings not related to the Work required pursuant to the Settlement.

Syntex may participate in such community involvement activities at its election but is not required to do so. Respondents' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Grant or Technical Assistance Plan recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP Respondents' responsibilities for community involvement activities. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight.

3.2 BCP CI Coordinator for the Focused RI/FS Phase 1. If requested by EPA, BCP shall, within 30 days of the Effective Date of the Settlement, designate and notify EPA of BCP's Community Involvement Coordinator for the Focused RI/FS Phase 1 ("BCP CI Coordinator"). BCP may hire

a contractor for this purpose. BCP's notice must include the name, title, and qualifications of the BCP CI Coordinator. The BCP CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Focused RI/FS Phase 1.

4. MEETINGS

4.1 Meetings

- (a) **Kickoff meeting.** Within 30 days of the Effective Date, BCP shall schedule a kickoff meeting with technical staff, EPA, and MoDNR to discuss this SOW. The meeting will also be used to outline project specific requirements including project objectives, data gaps, potential sampling and analysis methods, and performance goals. The kickoff meeting and systematic planning meetings referenced in Section 4.1(b) will be documented in the QAPP.
- (b) **Project Planning meeting.** Within 15 days of EPA and MoDNR's review and approval of the CSM, BCP shall schedule a meeting with technical staff, EPA, and MoDNR to discuss the CSM and Focused RI/FS Phase 1 Work Plan.
- (c) **Meetings.** BCP shall participate in other meetings and may make or contribute to presentations at the request of EPA during the Focused RI/FS Phase 1. Meetings will be scheduled at EPA's discretion and shall consider Respondents' availability and provide Respondents at least 14 days' notice.

5. SCHEDULE

- 5.1 All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed Section 2, in the schedule required pursuant to Section 2.3, and as set forth below. BCP may submit a proposed revised schedule for EPA and MoDNR approval. Upon EPA's approval, the revised schedule shall supersede the schedule in Section 5.2, and any previously approved schedule.

5.2 Focused RI/FS, Phase 1 Schedule

Item	Description of Deliverable, Task	Section Reference	Deadline
1	Previous Investigation and Historical Records Summary Report	2.1	Within 90 days after the Effective Date of the Settlement
2	Phase 1 Conceptual Site Model Report	2.2	Within 60 days after EPA and MoDNR's review and approval of Item 1
3	Focused RI/FS, Phase 1 Work Plan	2.3	Within 60 days after EPA and MoDNR's approval of Item 2
4	Phase 1 Sampling and Analysis Plan	2.3(a)	Within 60 days after EPA and MoDNR's approval of Item 2
5	Phase 1 Field Sampling Plan	2.3(b)	Within 60 days after EPA and MoDNR's approval of Item 2
6	Phase 1 Quality Assurance Project Plan	2.3(c)	Within 60 days after EPA and MoDNR's approval of Item 2
7	Phase 1 Health and Safety Plan	2.3(d)	Within 60 days after EPA and MoDNR's approval of Item 2
8	Phase 1 Emergency Response Plan	2.3(e)	Within 60 days after EPA and MoDNR's approval of Item 2
9	Draft Focused RI/FS Phase 1 Report	2.4(b)	Within 60 days after receipt of all validated analytical results from field work per the approved Work Plan
10	Final Focused RI/FS Phase 1 Report	2.4(b)	Within 30 days after receipt of EPA and MoDNR's comments on Item 9
11	Kickoff meeting	4.1(a)	Within 30 days of the Effective Date
12	Project Planning Meeting	4.1(b)	Within 15 days of EPA and MoDNR's approval of the CSM

6. REFERENCES

- 6.1 The following regulations and guidance documents, among others, apply to this SOW. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in Section 6.2:
- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
 - (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
 - (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
 - (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).

- (e) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (f) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (g) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
- (h) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (i) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002), <https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>.
- (j) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (k) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (l) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (m) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (n) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (o) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (p) USEPA Contract Laboratory Program Statement of Work for Superfund Analytical Methods, Multi-Media, Multi-Concentration, SFAM1.0 (May 2019), <https://www.epa.gov/clp/superfund-analytical-methods-sfam011>.
- (q) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (r) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (s) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (t) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), https://www.epaosc.org/_HealthSafetyManual/manual-index.htm.

- (u) Guidance on Systematic Planning Using the Data Quality Objectives Process, EPA QA/G-4, EPA/240/B-06/001, Office of Environmental Information (Feb. 2006), <https://www.epa.gov/sites/production/files/2015-06/documents/g4-final.pdf>.
- (v) Smart Scoping for Environmental Investigation Technical Guide, EPA 542-G-18-004 (Nov. 2018), <https://semspub.epa.gov/work/HQ/100001799.pdf>.
- (w) EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014).

6.2 A more complete list can be found on the following EPA web pages:

- (a) Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>
- (b) Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>
- (c) Quality Assurance:
 - (1) EPA QA Field Activities Procedures: <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>
 - (2) Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements>
 - (3) EPA's Contract Laboratory Program <https://www.epa.gov/clp>
SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods: <https://www.epa.gov/hw-sw846>
 - (4) Standard Methods for the Examination of Water and Wastewater: <http://www.standardmethods.org/>
 - (5) 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods: <https://www3.epa.gov/ttnamti1/airtox.html>
- (d) Superfund Reuse: <https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-basics#policy>

6.3 For any regulation or guidance referenced in the Settlement or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

APPENDIX C

LETTER FROM EPA AND STATE TO SYNTEX

APPENDIX C

Syntex Agribusiness, Inc.
1 DNA Way
South San Francisco, CA 94080

Re: Syntex Facility Superfund Site – Satisfaction and Termination of Prior Orders

To whom it may concern:

This letter is being provided to Syntex Agribusiness, Inc. (“Syntex”) in parallel with and contingent upon the execution and effectiveness of the Administrative Settlement Agreement and Order on Consent for Focused Remedial Investigation/Feasibility Study, Docket No. CERCLA-07-2023-0070 (“Settlement”) between the United States Environmental Protection Agency (“EPA”), the State of Missouri, BCP Ingredients, Inc. (“BCP”), and Syntex.

As you are aware, Syntex entered into three prior orders with EPA regarding the Syntex Facility Superfund Site in Verona, Missouri (the “Site”), and a fourth regarding the Site with EPA and the State of Missouri. The four orders are as follows:

1. An Order Regarding Monitoring, Testing, Analyses and Reporting, Docket No. 82-H-36, entered in August 1982 under Section 3013 of RCRA by EPA and Syntex (the “1982 Order”);
2. Consent Agreement and Order, Docket No. 83-H-008, entered in September 1983 under Section 106(a) of CERCLA and Section 3013 of RCRA by EPA and Syntex (the “1983 Order”);
3. Administrative Order on Consent for Response Actions, Docket No. VII-97-F-0016, entered in July 1997 under Sections 104, 106(a), 107, and 122 of CERCLA by EPA and Syntex (the “1997 Order”); and
4. Administrative Settlement Agreement and Order on Consent for Investigation entered September 2016 under Sections 104, 107, and 122 of CERCLA, the Missouri Hazardous Waste Management Law, and Sections 3008(h) and 3013 of RCRA by EPA, the State of Missouri, and Syntex (the “2016 Order”).

Syntex performed the work under the 1982 Order, 1983 Order, and 1997 Order years ago, but the historical record is unclear whether EPA formally terminated those orders. Therefore, to clarify the record, as of the Effective Date of the Settlement, EPA has determined that the obligations of the 1982 Order, 1983 Order, and 1997 Order have been satisfied by Syntex and those orders are deemed terminated. Any remaining long-term obligations required by those orders, such as operation and maintenance, have been included in the Settlement, are addressed elsewhere (including but not limited to, in the environmental covenants described in Paragraphs 29, 31, and 32 of the Settlement), or are addressed as follows:

1. Develop an operation and maintenance plan (“O&M plan”¹) for submission to EPA and the State that includes the following components:
 - a. Vegetative Covers. The vegetative covers shall be maintained in the following areas addressed under the 1983 Order and the Operable Unit 1 Record of Decision: Burn Area, Lagoon Area, Irrigation Area, Slough Area, and Grid Area.
 - b. Inspections. The areas identified above plus the Spill Area, the T-1 Dike Area and the Trench Area shall be inspected on a periodic basis to determine their condition. The inspection reports shall be submitted to EPA.
 - c. Groundwater monitoring. Continue groundwater monitoring in the Trench area for a period of time to be approved by EPA and the State.

Syntex may develop separate O&M plans for the East Area and West Area at its discretion. The O&M plan(s) would clearly lay out roles and responsibilities for all actions required by the plan(s). EPA and the State agree that Syntex may propose that the O&M plan(s) be appended to an Environmental Covenant described above.

Upon application to and approval by EPA, these O&M obligations may be transferred to third persons, and, upon transfer, Syntex’s obligations could be terminated.

With respect to the 2016 Order, EPA and the State of Missouri agree that the only additional work to be performed pursuant to that order are the Phase 3 and 4 work, as approved by EPA and the State of Missouri, pursuant to an addendum to the East Area Groundwater Sampling and Analysis Plan. Upon the satisfactory completion of the Phase 3 and 4 work, EPA and the State of Missouri will terminate the Order as per the terms of that 2016 Order. EPA and the State of Missouri agree that any additional Site groundwater work will not be performed pursuant to the 2016 AOC.

In addition, EPA has taken appropriate steps to document and provide Syntex and BCP notice that a new Operable Unit, OU3, has been created to address Site groundwater, whether pursuant to the Settlement or otherwise. OU3 effectively takes over the groundwater issues at the Site that were previously covered by OU2.

¹ The O&M plan shall include elements consistent with EPA guidance (OLEM 9200.3-105, 2017, *Guidance for Management of Superfund Remedies in Post Construction*).

United States Environmental Protection Agency

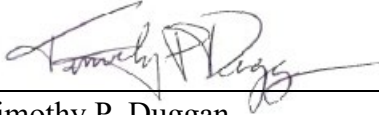
Scott D.
Hayes

 Digitally signed by Scott
D. Hayes
Date: 2023.06.09
07:19:18 -05'00'

Robert D. Jurgens, Director
Superfund & Emergency Management Division
Region 7

STATE OF MISSOURI

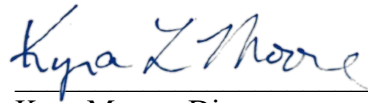
ANDREW BAILEY
Attorney General

A handwritten signature in black ink, appearing to read "Timothy P. Duggan", written over a horizontal line.

Timothy P. Duggan
Assistant Attorney General

Date: June 7, 2023

Missouri Department of Natural Resources

A handwritten signature in blue ink that reads "Kyra Z Moore". The signature is written in a cursive style with a large, stylized 'K' and 'M'.

Kyra Moore, Director
Department of Environmental Quality
Missouri Department of Natural Resources